

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

BMS SETTLEMENT AND
TRACK TWO SETTLEMENT

Judge Patti B. Saris

**CLASS PLAINTIFFS' ELEVENTH STATUS REPORT FOR BMS AND
TRACK TWO SETTLEMENTS**

A. Background

On November 30, 2010, the Court issued an Order for Final Consideration of the BMS Settlement (Dkt. No. 7313) and an Order for Final Consideration of the Track Two Settlement (Dkt. No. 7314) (collectively, the "November Orders"). The November Orders directed Class Counsel to provide monthly status reports "detailing the progress" of the BMS and Track 2 Settlements. This is the eleventh such report.

B. BMS Settlement

The Court held a final fairness hearing related to the BMS Settlement on July 7, 2011. On July 19, 2011 the Court entered an order granting final approval of the BMS Settlement (Dkt. No. 7674). No appeals to the Court's Order granting final approval of the BMS Settlement were filed. On August 29, 2011 the parties entered a stipulation dismissing all appeals in the First Circuit related to the BMS Settlement. The claims administrator is currently processing consumer claims for a projected distribution of funds to class claimants in December 2011.

C. Track Two Proposed Settlement

Pursuant to discussions with the Court during a hearing on August 8, 2011, on August 19, 2011 Class counsel submitted a revised proposed rebalancing related to the Track Two Settlement and addressed certain issues raised by the Court in the August 8, 2011 hearing. Dkt. Nos. 7750-53, 7660-61. In addition, Class Counsel submitted proposed notices to be served on certain class members. Dkt. No. 7756. On August 24, 2011 objector Patricia Weatherly filed a response to the proposed rebalancing. Dkt. No. 7764. On August 25, 2011, objectors Susan Aaronson *et al.*, represented by attorney Donald Haviland, withdrew their objections to the Track Two Settlement. Dkt. No. 7766. On August 30, 2011, the Court overruled Ms. Weatherly's objections (Dkt. No. 7777), allowed a pending motion to add individual and associational plaintiffs as class representatives (Dkt. No. 7775) and approved the form and manner of notice to be sent to class members affected by the proposed rebalancing. Dkt. No. 7772.

The supplemental notice approved by the Court was mailed, first class, to all affected consumer class members on September 16, 2011. Class members have until October 28, 2011 to respond to the supplemental notice. The Court has scheduled a final approval hearing on November 22, 2011.

D. The Next Status Report

Pursuant to the November Orders, Class Counsel will submit its next regularly-scheduled Status Report on November 1, 2011.

DATED: October 3, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S ELEVENTH STATUS REPORT FOR BMS AND TRACK TWO SETTLEMENTS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on October 3, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman
Steve W. Berman